

REMARKS

It is the understanding of the undersigned that the Patent Office prefers that, rather than petitioning premature final rejections, that a response be made indicating the basis for prematurity and that if the rejection is then not withdrawn, a petition may be filed.

Either the finality of the present rejection is premature or the rejection is, by its own admission, inadequate. If the Examiner intended in the rejection to make a Section 103 rejection based on the combination of Nakata and Asahi, since no amendment was made which necessitated the rejection, the rejection is necessarily premature.

On the other hand, if the Examiner is still relying on Nakata by itself, then the rejection now concedes that the rejection based on Nakata alone is insufficient. In other words, the office action would then attempt to rely either on the Asahi reference or well known prior art. Neither of these items was ever relied on before. If something other than Nakata needs to be relied on in order to fulfill an admitted deficiency in Nakata, a *prima facie* rejection is not made out on its face.

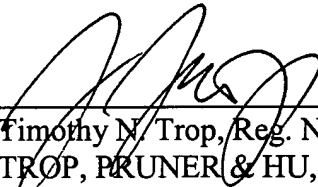
The Applicants decline to respond further to the prior art rejection given its uncertainty. The rules require that the rejection be provided with sufficient clarity to formulate a response. Here, it is no longer clear whether the rejection is based on one or two references. Therefore, the rejection should be withdrawn and either a new rejection that would be non-final substitute in its place including both references or the reference to the Asahi reference should be stricken and a new final rejection substituted in its place.

With respect to the various Section 112 objections arguing that the specification teaches a system and the claim calls for a device, it seems to be beyond all reasonable dispute that a system is a device and a device may include a system. Therefore, this is a distinction without any difference. Moreover, it is well established that the words in the claim and the words in the specification need not be identical.

Therefore, reconsideration of the rejection under Section 112 is respectfully requested.

Respectfully submitted,

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